SUPREME COURT OF THE UNITED STATES

October Term 1980

No. 80-1041

VIRGIL R. RIZZO, Petitioner,

versus

THOMAS L. DAVIS, District Director
Internal Revenue Service,

Respondent.

REPLY BRIEF FOR THE PETITIONER

VIRGIL R. RIZZO

pro se

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15086

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ARGUMENT

I. THE SOLICITOR GENERAL RELIES ON AUTHORITY THAT HAS BEEN OVERRULED.

The denial of Petitioner's due process and equal protection rights to contest his tax deficiency determination cannot be justified by the Respondent's reliance on Phillips v. Commissioner, 283 U.S. 589 (1931). Phillips was overruled in 1976 in Commissioner v. Shapiro, 424 U.S. 614 when this Court said:

> Accordingly neither the holding nor the dicta in Phillips support the proposition that the tax collector may constitutionally seize a taxpayer's assets without showing some basis for the seizure under circumstances in which the seizure will injure the taxpayer in a way that cannot be adequately remedied by a Tax Court judgment in his favor.

Shapiro shows that the Petitioner here is entitled to relief under the Anti-Injunction Act because he has neither a legal remedy nor an opportunity to show who may prevail. Enochs v. Williams Packing Co., 370 U.S. 1 (1962).

II. THE IRS CANNOT RELY ON A POWER OF ATTORNEY WHICH IT FAILED TO COMPLY WITH.

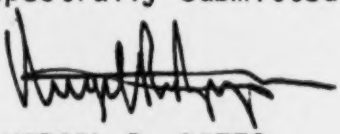
Respondent's failure to send Petitioner's attorney a copy of the "notice of deficiency" in disregard to the direction of the power of attorney and then to claim the

address thereon as the only proper address, to the detriment of the Taxpayer, is inequitable and unjust. The IRS cannot on one hand justly expect to hide behind the power of attorney as to its content and on the other hand ignore its direction to support an argument in its favor. This Court should grant certiorari to settle the inequity generated from application of different criteria in determining a taxpayer's last known address.

CONCLUSION

This Court should grant certiorari to resolve the conflict in the Circuits, to protect the rights of the Petitioner and to exercise its power of supervision over the Court of Appeals because of the conflict with applicable decisions of this Court.

Respectfully submitted,



VIRGIL R. RIZZO